

what did they do? They decided to take the money they need out of Medicare, and that has only made their health care plan even less popular with the American people.

The Gregg amendment, which we will vote on later this afternoon, will help reverse the damage of last week's votes. The Gregg amendment says Democrats can't raid Medicare, which is already in serious trouble, in order to pay for their \$2.5 trillion bill. The money going out of Medicare's hospital insurance trust fund already exceeds its annual income. It is already drying up. By 2017, the hospital insurance trust fund will not be able to pay full benefits, and that is before our colleagues get their hands on it. This program needs to be fixed, not pillaged to create another one.

So the Gregg amendment prohibits using money from Medicare to pay for any new government programs, for expanding existing programs, or for subsidies. Instead, it directs that any money from Medicare be put back into Medicare to strengthen and preserve it for future generations so we can keep our promises. Frankly, this is common sense.

Americans don't want this bill to pass, and they certainly don't want it to pass at the expense of the roughly 40 million American seniors who depend on Medicare. The Gregg amendment would keep that from happening. A vote for the Gregg amendment is a vote to keep our promise to seniors.

We are also going to have a vote today on the Ensign amendment. The amendment is simple: It is designed to ensure that injured patients—not their lawyers—receive the vast majority of any settlement in a medical malpractice suit. It says that since lawsuits should benefit patients, not lawyers, lawyers can't take more than one-third of the recovery their clients receive. In other words, the lawyers can't take more than one-third of what the client gets.

These are responsible limits. Moreover, they were written by a Democrat and supported in the past by 21 of our current Democratic colleagues, as well as the Vice President, and they would drive down costs, which was the original purpose of reform.

The independent Congressional Budget Office has said comprehensive liability reforms would save the taxpayers more than \$50 billion. The Ensign amendment is a step in that direction.

We will offer a better, step-by-step reform to end junk lawsuits against doctors and hospitals later in the consideration of this bill. I am hopeful my Democratic colleagues will support it again, since so many of them have supported it in the past.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Illinois is recognized.

Mr. DURBIN. Mr. President, I ask unanimous consent to speak as in leader time.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

#### HEALTH CARE REFORM

Mr. DURBIN. Mr. President, Senator REID contacted me earlier today and said he was unable to be here for the opening of the session, and I told him I would be here to open.

I would like to say, briefly, in response to the comments that have been made by the minority leader, Senator MCCONNELL, who continues to raise the question about the future of Medicare, that I hope the Senator is sensitive to the fact that this last week, on December 3, we voted 100 to 0 for the amendment offered by Senator BENNET of Colorado, which said nothing in the amendments to this act shall result in the reduction of guaranteed benefits under the Social Security Act provisions related to Medicare; and we went on to say any savings would be used to extend the solvency of the Medicare trust fund, reduce Medicare premiums and other cost sharing for benefits and improve or expand guaranteed Medicare benefits and protect access to Medicare providers.

We voted 100 to 0, in a bipartisan fashion, to make certain we protect the Medicare Program. That is the way it should be, and that is the way the Senate voted.

#### RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

#### SERVICE MEMBERS HOME OWNERSHIP TAX ACT OF 2009

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of H.R. 3590, which the clerk will report.

The legislative clerk read as follows:

A bill (H.R. 3590) to amend the Internal Revenue Code of 1986 to modify the first-time home buyers credit in the cases of members of the Armed Forces and certain other Federal employees, and for other purposes.

Pending:

Reid amendment No. 2786, in the nature of a substitute.

Lincoln amendment No. 2905 (to amendment No. 2786), to modify the limit on excessive remuneration paid by certain health insurance providers to set the limit at the same level as the salary of the President of the United States.

Ensign amendment No. 2927 (to amendment No. 2786), relative to limitation on amount of attorney's contingency fees.

The ACTING PRESIDENT pro tempore. Under the previous order, the time until 3:15 p.m. will be for debate with respect to amendment No. 2905, offered by the Senator from Arkansas, Mrs. LINCOLN; and amendment No. 2927, offered by the Senator from Nevada, Mr. ENSIGN, with the time equally divided and controlled, with Senators

permitted to speak for up to 10 minutes, with the majority controlling the first 60 minutes and the Republicans controlling the next 60 minutes.

The Senator from Florida.

Mr. NELSON of Florida. Mr. President, I wish to speak on the bill and, in part, respond to the minority leader. At the end of the day, why are we staying around the clock discussing this bill with the intent that we are going to pass the bill? It is simply that we cannot continue as we are. We are in a system whereby insurance is not solving the Nation's health needs.

All you have to do is talk to a doctor. If they haven't already pulled their hair out, they are about to, in that when they want to give a certain treatment to a patient, they feel like they have to negotiate with the insurance company. In fact, the insurance company often is dictating to them what treatment and what drugs they can or cannot use or look at the simple little cases we hear about.

They are absolutely simple cases but end up with catastrophic results because someone is in the middle of a treatment for something and then they get a notice that their insurance company is going to cancel them or, perhaps, they have lost their job and they are desperately trying to get health insurance again and an insurance company uses, as an excuse, that they had a preexisting condition. It may be a flimsy excuse. I gave the example yesterday of a reason for denial being something as silly as a skin rash as a preexisting condition and so they can't get health insurance now on their own. We have a system that is out of control.

We hear a lot about cost out here. We hear a lot about cost. Indeed, if we don't do something about the cost of health care, none of our people are going to be able to afford it. Talk to corporate America and the CEOs and listen to them as they describe what the insurance companies are saying to them and how they are jacking up their rates on their employer-sponsored group policies. Please, pray that you are not an individual who can't get a group policy and you are having to go out there and try to find an individual policy because the likelihood is you are not going to be able to afford it.

So cost is a critical factor. It is a factor also to the Government because the U.S. Government cannot afford the cost of Medicare as it keeps exploding into the future. We have to bring these costs under control. When you mix that in with the horror stories that we hear of the 46 million people who don't have health insurance but who, when they get sick, end up in the emergency room, we know they are getting that care at the most expensive place while the rest of us pay. That is a hidden tax.

On average, in this Nation, that hidden tax is \$1,000 per family's health insurance policy. I can tell you, in my State of Florida it is even higher. It is \$1,400. In Florida, a family with a group